

IN THE

**Supreme Court of the United States**

**October Term, 1954**

No. [REDACTED]

74

UNITED STATES OF AMERICA,

*Petitioner,*

v.

LESLIE SALT COMPANY,

*Respondent.*

**MOTION FOR LEAVE TO FILE BRIEF AMICUS  
CURIAE**

Comes now Plymouth Oil Company, by its undersigned counsel, and respectfully moves this Court for leave to file brief amicus curiae, and in support thereof shows as follows:

1. Plymouth Oil Company, a corporation organized under the laws of Delaware, with principal offices at Pittsburgh, Pennsylvania, is the plaintiff in Civil Action No. 10,322 in the United States District Court for the Western District of Pennsylvania in a suit for refund of documentary stamp taxes imposed by the Collector of Internal Revenue under Section 1801 of the 1939 Internal Revenue Code on promissory notes issued by Plymouth Oil Company as evidence of a commercial loan secured from its regular commercial bank.
2. An examination of the petition for certiorari and brief in opposition in the instant case discloses that the same general question of the applicability of the Section 1801 tax is involved herein.

3. An examination of the petition discloses also that petitioner proposes to urge this Court that "instruments evidencing long-term loans which contain . . . detailed restrictions on the borrower for the lender's benefit" are subject to this tax; that the only instruments free thereof are those "notes used customarily in day to day commercial transactions of a short time credit character"; and that this Court should somehow define the term "debentures" so as to produce this result. The government has advanced these same contentions in its petition to this Court for a writ of certiorari to the United States Court of Appeals for the Third Circuit in *Smith v. The Curtis Publishing Company*, No. 254. As pointed out in that petition, the Circuit Court held that the documentary stamp tax did not apply to instruments evidencing the loan made by the borrower's regular commercial bank in the ordinary course of its regular commercial loan business to a commercial depositor.

4. The government's analysis thus renders irrelevant all other factors in the case, including such matters as the relationship between the lender and the borrower and the fact of whether the instrument in dispute is a marketable investment security or simply evidence of a loan from the lender to the borrower.

5. It would be the purpose of the proposed brief amicus curiae to urge the Court that the factors referred to in paragraph 4 and other related factors are important; that with very limited exception, the decided cases fall into two categories with reasonably well-defined boundaries; and that as properly held in *Niles-Bement-Pond Co. v. Fitzpatrick*, 213 F(2d) 305 (2d Cir. 1953), each case must be decided on the basis of all of its facts.

6. In view of the fact that the parties in the instant case are inevitably concerned with the precise facts in the instant case, counsel feels that it would be helpful to this

Court to have before it a separate brief dealing only with the fundamental problems involved in this overall question which is of real importance in the field of corporate financing.

7. As indicated by the consent herewith filed, counsel for petitioner has consented to the granting of this motion. Counsel for respondent has seen fit to withhold his consent.

WHEREFORE, it is respectfully requested that this Court grant this motion.

Respectfully submitted,

EDGAR J. GOODRICH

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Re: United States v. Leslie Salt Co.

No. 74.

Dear Mr. Redman:

I have your letter of June 16, in which you request consent to the filing of an *amicus* brief in the above-entitled case on behalf of Plymouth Oil Company of Pittsburgh, Pennsylvania.

Your letter states that you represent the Company in a case pending in the United States District Court for the Western District of Pennsylvania, involving substantially similar issues to those in the *Leslie Salt* case. You state, further, that your brief will deal with points which will probably not be covered at all in respondent's brief. Accordingly, I am happy to consent to your request.

Sincerely yours,

/s/ Simon E. Sobeloff  
Simon E. Sobeloff,  
Solicitor General.